IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1163 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITABEN DINESHBHAI GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1163 of 2003

MR AJ YAGNIK for Petitioner No. 1

MR AY KOGJE, APP for Respondent No. 1-3

MS SHAILI A KAPADIA for Respondent No. 4

MR HORMAZ B SHETHNA for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/09/2004

ORAL JUDGEMENT

1. The petitioner Mrs. Nitaben Dineshpuri Goswami, by invoking the jurisdiction of this Court under Article-226 of the Constitution of India, for the grounds mentioned and averments made in the petition, has prayed for the following main reliefs:-

(A) xxx xxx xxx

(B) Directing the respondents particularly respondent Commissioner of Police, Surat City to immediately act upon her application in the form of complaint dated 7.11.2003 annexed to the present petition at Annexure:A;

(C) Directing the respondents and particularly respondent Commissioner of Police, Surat City and respondent Assistant Commissioner of Police Mr. Dodiya to restore possession of the Flat in question to the petitioner with all the belongings therein at once.

(D) Directing the respondents and particularly respondent Commissioner of Police, Surat City to take all the departmental and penal actions against the respondent Assistant Police Commissioner Mr. Dodiya for his impugned action.

2(i) I have considered the say of the petitioner Mrs. Nitaben Goswami, affidavit-in-reply filed by Mr. Dineshpuri Goswami, husband of the petitioner, submissions made by ld. APP Mr. Kogje for respondent Nos.1 to 3, submissions made by ld. counsel Ms. Shaili Kapadia for respondent No.4 and submissions made by ld. counsel Mr.Shethna for respondent No.5.

(ii) The parties have not pressed for a reasoned order in view of the development that has taken place and, therefore, it is possible for this Court to dispose of this petition by passing order for effective disposal of the petition and redressal of the grievances expressed by the petitioner. Ld. APP Mr. Kogje has submitted that when petitioner Mrs. Goswami is ready to hand over peaceful and vacant possession of the premises rented to her to respondent no.5, landlord of the premises, then some via-media can be worked out and appropriate directions can be issued.

3(i) It is not a matter of dispute that at present one key of the lock applied at the residential premises which was initially rented to the petitioner, is with

respondent No.5. It is not necessary to mention that how respondent No.5 came into possession/custody of the key because the petitioner has stated that she herself had handed over the key to her landlord. Her anxiety is to see that her household and other material lying in the premises, at least, should reach to her residential house located at village Dadva, Ta: Umrala, Dist: Bhavnagar. The petitioner being a lady coming from Socially & Economically Backward Class, the State machinery and especially the machinery giving assistance to the females involved in litigation can be directed to put some efforts only with a view to see that litigation pending in the Court comes to an end.

(ii) When the petitioner is resident of District Bhavnagar, District Judge & Chairman of District Legal Services Authority (DLSA for short) can be asked to depute a Class:III employee having some experience of work as a Court Commissioner who can go to Surat and help the petitioner in the exercise to see that her material is safely loaded in motor vehicle hired by her and the same is dispatched at her present residence, of course, at the costs of the petitioner. The petitioner is not desirous to go to Surat herself because she apprehends that her visit to Surat may further complicate the issue that has cropped up with local police and local persons. So, she can be directed to depute a person responsible of her choice and she should name that person and disclose his identity/relations to the District Judge & Chairman DLSA, Bhavnagar. She can also give a letter of authority so that a person deputed can show that authority if asked for by any machinery at Surat either police or the officer working under District Judge, Surat.

(iii) In the same way, the District Judge, Surat, in the capacity of the Chairman of DLSA also can be directed to depute one more person working under him in the cadre of Class:III employee and both these persons i.e. one deputed by the respective District Judges (i.e. of Bhavnagar and Surat). They may be directed to act accordingly and in the spirit of present order and they shall jointly go on a given date that may be communicated/ intimated to respondent no.5. If required, these two appointed persons working under the respective District Judges, may seek assistance and help of local police approaching the concerned police station i.e. Adajan Police Station, if so desired. Their request to provide assistance be adhere to as if it is by the officer of the Court.

(iv) The person deputed by the petitioner shall also

remain present on that day and shall have sole responsibility to see that a vehicle is kept ready and thereafter the household material lying in the residential premises at present locked in the house owned by respondent no.5, be taken out and loaded in the said vehicle preparing detailed Rojnama articlewise and narrating condition, if required.

(v) It would be open to take help of any labourer or artisan for taking away goods of the petitioner and during this exercise, the Court officials and persons working in their presence and with permission, may not be obstructed by any of the respondents. After taking out all the materials, respondent no.5 and the person deputed by the petitioner shall sign the Rojnama containing the details of each articles in the presence of both the Commissioners/ Persons deputed by both the aforesaid District Judge. Zerox copy of the Rojnama may be kept with the person deputed by the District Judge, Surat and original be given to the person who is deputed by the District Judge, Bhavnagar. Any of the respondents is desirous to have copy of it, zerox copy thereof be given to that respondent at his costs.

(vi) Both the persons deputed will be under obligation to see that after vacating the house, the same is locked again and the key is handed over to respondent no.5 and that act of handing over the key to respondent no.5 shall be construed as handing over of physical, actual and vacant possession of the premises which is at present in the custody of the present petitioner and her husband in the capacity of a tenant for all legal purposes.

(vii) A positive statement is made by ld. counsel Mr. Yagnik for the petitioner that there shall not be any litigation under the Bombay Rent Act against respondent No.5 and it shall be construed that the petitioner herself has surrendered her right and handed over peaceful and vacant possession of respondent No.5 landlord. The parties have agreed not to raise any claim or counter-claim of any kind in this regard.

4. The petitioner shall be under obligation to pay remuneration that may be decided by the respective District Judges in advance as if she is asked to pay fees for the Commissioner appointed by the Court. Both the District & Sessions Judges are authorised to use their discretion while determining the amount and of course, they can take take into account the norms that have been fixed by the government in this regard while fixing the amount of remuneration for two deputed persons. The

material so dispatched from Surat shall be at the risk and costs of the present petitioner, and none of the respondents will be liable after departure of the vehicle from the spot i.e. residential house of respondent no.5. Insurance cover during transportation is the option available to the petitioner.

5. Ld. counsel Mr. Shethna appearing for respondent no.5 has categorically stated that respondent no.5 shall not claim any amount from the petitioner in the name of either rent, or tax or cess, electricity charges or under any head and acceptance of possession shall, therefore, be construed as acceptance against full and final settlement, if any.

6. The Court is inclined to observe at this stage that the parties have agreed to ignore the allegations and counter allegations that are made against each other, in their pleadings and affidavits.

7. Both the District Judges shall see that this exercise is over within 40 days from today.

8. Registry is directed to send copy of the order to District Judges, Bhavnagar & Surat and also to Adajan Police Station. Ld. Counsel Mr. Yagnik says that the petitioner has voluntarily agreed to one situation that the petitioner will not claim any damage or loss or file any criminal complaint qua the household articles if are found missing against respondent no.5 because at present respondent no.5 is holding the keys.

9. This order is passed without prejudice to the rights and contentions of all the parties. Any of the parties can approach this Court in case of extreme difficulty.

10. Directions accordingly.

11. Rule is made absolute in above terms. Direct Service is permitted.

[C.K. BUCH, J]
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